

DETAILED ACTION

Status of the Claims

1. This action is in response to the amendment filed on May 9, 2008.
 - Claims 1-21 are pending.
 - Claim 11 has been amended.

Response to Arguments

2. Applicant's arguments filed May 9, 2008 have been fully considered but they are not persuasive. Applicant argues that Bernstein does not teach calculating a payment time for reach of said preference payments and selecting a CENV payment time. Examiner disagrees. In part 8 of Bernstein, calculating a payment time for reach of said preference payments and selecting a CENV payment time is shown by example. See below:

This defense only protects preference transfers to the extent that the creditor can prove that the value given to the creditor equals the value the debtor received. For example, you ship \$100,000.00 in merchandise to a customer on 30-day terms. The customer pays you \$100,000.00 within the 30 days and then files bankruptcy within 90 days of the payment. Under the Code, the payment is considered a contemporaneous exchange for new value and cannot be avoided as a preference.

One of ordinary skill in the art would easily recognize that a payment for the goods must be received within 30 days. According to the example, payment is received within the 30 days. In this example, the CENV payment time is set to 30 days. Any payment received 30 days after delivery of a product or service to the debtor would qualify under CENV defense. Regarding, calculating a payment time, one of ordinary skill in the art would easily be able to calculate payment time because the receiver knows when they receive payment and they also know when they should have received the payment. If the number is over 30 days (CENV time), the CENV defense may not work.

3. Next, Applicant argues that Bernstein fails to teach a plurality of Ordinary Course of Business (OCB) protected ranges. Examiner disagrees. In section 9, Bernstein teaches the concept of OCB protected ranges.

Courts have considered normal terms to include terms which deviate from those set forth in the documents between the parties, when the parties in fact ordinarily transacted business outside the express terms of the documents. For example, a creditor ships goods monthly to a debtor net 30 days per the invoices. Over the course of two years the debtor always paid the creditor between 45-50 days. During the preference period, the debtor also paid the creditor between 45-50 days. Thus, notwithstanding the net 30 day terms, the normal course of payment between the debtor and the creditor was 45 days. Since the payments during the preference period were also within this time frame, the creditor has met this element of the preference defense.

In the example above, the OCB protected range is 45-50 days. Payments made to creditor during this period of time would be considered in the ordinary course of business and thus the creditor has met the element of preference defense as taught by Bernstein. One of ordinary skill in the art would know this analysis could be repeated for multiple OCB ranges with predictable results. Regarding Applicants argument that an algorithm is not present within Bernstein, it is noted that an algorithm is simply a step-by-step problem-solving procedure. Bernstein has met this limitation by giving clear examples how to defend against preference actions. One of ordinary skill in the art would know how to calculate a day spread based on the example above. Since the expected payment is net 30 days, and normal payments were always between 45 to 50 days, the day spread is 15 to 20 days.

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-21 rejected under 35 U.S.C. 103(a) as being unpatentable over A Primer on Preferential Transfers in Bankruptcy by Robert S. Bernstein (see PTO-892, Ref. V) [Hereinafter Bernstein] in view of Holm et al., U.S. Patent Application Publication 2003/0220863 (see PTO-892, Ref. A).

7. As per claim 1, Bernstein teaches a method of calculating the contemporaneous exchange for new value defense for one or more preference payments comprising the steps of: calculating a payment time for each of said preference payments, said calculation being a function of said payment date and said provided date; selecting a CENV payment time; comparing said selected CENV payment time to said calculated payment time of said preference payments; and differentiating those of said preference payments having payment times that are less than or equal to said CENV payment time from the remainder of said preference payments (see Parts 8 and 9).

Bernstein does not explicitly teach creating in said data processing medium, one or more lines of data related to each of said preference payments, each of said lines of data including an expression of an invoice amount, a payment date and a provided date.

Holm teaches creating in said data processing medium, one or more lines of data related to each of said preference payments, each of said lines of data including an expression of an invoice amount, a payment date and a provided date (see paragraphs 108-118 and 11-14).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Bernstein and Holm to create one or more lines of data related to an expression of an invoice amount, a payment date and a provided date in a data processing medium because doing it on a computer is faster and more efficient than traditional paper payment systems as taught by Holm (see paragraph 11).

8. As per claim 2, Bernstein and Holm teach the method of claim 1 as described above. Bernstein further teaches comprising: repeating said comparing step and said differentiating step for a plurality of said selected CENV payment times (see Parts 8 and 9).

9. As per claim 3, Bernstein and Holm teach the method of claim 1 as described above. Official Notice is taken that spreadsheet software programs and database software programs are old and well known in the art. One would be motivated to use

these software programs because they are more efficient than traditional paper systems.

10. As per claims 4, Bernstein teaches the method of claim 2 as described above. Bernstein further teaches displaying concurrently the result of said differentiating step for each of said selected CENV payment times (see Parts 8 and 9). Official Notice is taken that displaying data in a spreadsheet or database software program is old and well known in the arts.

11. As per claims 5, Bernstein and Holm teach the method of claim 1 as described above. Bernstein further teaches summing said invoice amounts for those of said preference payments having payment times that are less than or equal to said CENV payment time (see Parts 8 and 9). Official Notice is taken that summing of invoice amounts for various payments in a spreadsheet or database software program is old and well known in the arts.

12. As per claims 6, Bernstein teaches the method of claim 5 as described above. Bernstein further teaches comprising: repeating said comparing step, said differentiating step and said summing step for a plurality of said selected CENV payment times (see Parts 8 and 9).

13. As per claims 7, Bernstein teaches the method of claim 6 as described above. Bernstein further teaches displaying concurrently the result of said summing step for each of said selected CENV payment times (see Parts 8 and 9). Official Notice is taken that displaying data in a spreadsheet or database software program is old and well known in the arts.

14. As per claim 8, Bernstein teaches a method of calculating the ordinary course of business defense for one or more preference payments comprising the steps of: calculating a payment time for each of said preference payments, said calculation being a function of said payment date and said provided date; selecting an assumed payment time; selecting a day spread; calculating an OCB protected range, said calculation being a function of said assumed payment time and said day spread; comparing said OCB protected range to said calculated payment time of said preference payments; and differentiating those of said preference payments having payment times that fall within said OCB protected range from the remainder of said preference payments (see Parts 8 and 9).

Bernstein does not explicitly teach creating in said data processing medium, one or more lines of data related to each of said preference payments, each of said lines of data including an expression of a payment date and a provided date.

Holm teaches creating in said data processing medium, one or more lines of data related to each of said preference payments, each of said lines of data including an expression of a payment date and a provided date (see paragraphs 108-118 and 11-14).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Bernstein and Holm to create one or more lines of data related to an expression of a payment date and a provided date in a data processing medium because doing it on a computer is faster and more efficient than traditional paper payment systems as taught by Holm (see paragraph 11).

15. As per claim 9, Bernstein and Holm teach the method of claim 8 as described above. Bernstein further teaches comprising: repeating said comparing step and said differentiating step for a plurality of said OCB protected ranges (see Parts 8 and 9).

16. Claim 10 recites similar limitations to claim 3 and thus rejected using the same art and rationale in the rejection of claim 3 as set forth above.

17. As per claim 11, Bernstein teaches the method of claim 9 as described above. Bernstein further teaches comprising: displaying concurrently the result of said differentiating step for each of said ordinary course of business protected ranges (see Parts 8 and 9). Official Notice is taken that displaying data in a spreadsheet or database software program is old and well known in the arts.

18. As per claim 12, Bernstein teaches the method of claim 8 as described above. Bernstein further teaches wherein said assumed payment time is an historical average payment time (see Parts 8 and 9).

19. As per claim 13, Bernstein teaches the method of claim 11 as described above. Bernstein further teaches wherein said displaying step sorts each set of said results by said payment time of said preference payments in chronological order (see Parts 8 and 9). Official Notice is taken that displaying data in a spreadsheet or database software program is old and well known in the arts.

20. As per claim 14, Bernstein teaches the method of claim 8 as described above. Bernstein further teaches comprising: repeating said comparing step and said differentiating step for at least 12 of said OCB protected ranges (see Parts 8 and 9).

21. As per claim 15, Bernstein teaches a method of calculating the ordinary course of business defense and the subsequent new value defense for one or more preference payments comprising the steps of: calculating a payment time for each of said preference payments, said calculation being a function of said payment date and said provided date; selecting an assumed payment time; selecting a day spread; calculating an OCB protected range, said calculation being a function of said assumed payment time and said day spread; comparing said OCB protected range to said calculated payment time of said preference payments; differentiating those of said preference payments having payment times that fall within said OCB protected range from the remainder of said preference payments; summing said invoice amounts for those of said preference payments having payment times that fall within said OCB protected range; sorting said lines of data chronologically based on said payment date; distinguishing lines of data related to said preference payments having payment times that fall within said OCB protected range from the remainder of said lines of data; calculating the subsequent new value associated with each of said preference payments remaining after said distinguishing step; summing said subsequent new value associated with each of said preference payments remaining after said distinguishing step; and combining the sum of said invoice amounts for those of said preference payments having payment times that fall within said OCB protected range with the sum of said subsequent new value associated with each of said preference payments remaining after said distinguishing step (see Parts 8, 9 and 11).

Bernstein does not explicitly teach creating in said data processing medium, one or more lines of data related to each of said preference payments, each of said lines of data including an expression of a payment date, a provided date and an invoice amount.

Holm teaches creating in said data processing medium, one or more lines of data related to each of said preference payments, each of said lines of data including an expression of a payment date and a provided date (see paragraphs 108-118 and 11-14).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Bernstein and Holm to create one or more lines of data related to an expression of a payment date and a provided date in a data processing medium because doing it on a computer is faster and more efficient than traditional paper payment systems as taught by Holm (see paragraph 11).

Official Notice is taken that calculating various data in specific fields, comparing the data, summing the data and sorting said lines of data chronologically is old and well known in the art of spreadsheet and database programs.

22. Claim 16 recites similar limitations to claim 3 and thus rejected using the same art and rationale in the rejection of claim 3 as set forth above.

23. As per claim 17, Bernstein teaches the method of claim 15 as described above. Bernstein further teaches comprising: selecting a CENV payment time; comparing said selected CENV payment time to said calculated payment time of said preference payments; differentiating those of said preference payments having payment times that

are less than or equal to said CENV payment time from the remainder of said preference payments; and distinguishing lines of data related to said preference payments having payment times that are less than or equal to said CENV payment time from the remainder of said lines of data prior to said sorting step (see Parts 8, 9 and 11).

24. Claim 18 recites similar limitations to claim 3 and thus rejected using the same art and rationale in the rejection of claim 3 as set forth above.

25. As per claims 19 and 20, Bernstein teaches the method of claim 15 and 17 as described above. Bernstein further teaches displaying concurrently the result of said calculations of said ordinary course of business defense and said subsequent new value defense and displaying concurrently the result of said calculations of said contemporaneous exchange for new value defense, said ordinary course of business defense and said subsequent new value defense (see Parts 8 and 9). Official Notice is taken that displaying data in a spreadsheet or database software program is old and well known in the arts.

26. Claim 21 recites similar limitations to claim 2 and thus rejected using the same art and rationale in the rejection of claim 2 as set forth above.

Conclusion

27. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAHID R. MERCHANT whose telephone number is (571)270-1360. The examiner can normally be reached on First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz P. Abdi can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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